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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,171	12/01/2003	Richard Fouquer	031293	9397
23850	7590	12/19/2005	EXAMINER	
ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP 1725 K STREET, NW SUITE 1000 WASHINGTON, DC 20006			ADDISU, SARA	
			ART UNIT	PAPER NUMBER
			3722	

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/724,171

Applicant(s)

FOUQUER, RICHARD

Examiner

Sara Addisu

Art Unit

3722

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 3-18.

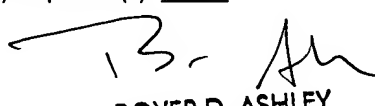
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☒ Other: See Continuation Sheet.


 BOYER D. ASHLEY
 PRIMARY EXAMINER

S.A. 12/15/05

Continuation of 3. NOTE: Claim 8 has been amended and the language used changes the scope of the limitation such that it raises new issues that require further searching .

Continuation of 11. does NOT place the application in condition for allowance because: Regarding Claim 1, Applicant stated (page 11 of Remarks, lines 10-11) that Page 4, lines 1-16 disclose the advantage of the curve section 45. Examiner respectfully disagrees. Examiner believes that the disclose in the Specification teaches the advantage of having a set-back (i.e. ensures the desired clearance of the heel in relation to the workpiece, page 4, lines 14-16). Applicant does not provide any criticality or unexpected results for the having a transition (with a set-back) having a curved shaped. It should be noted that Vollmer et al. teaches a set back formed by bends (12, 14) and transitional face (13) (5,755,536, Col. 3, lines 52-53). Vollmer et al. also gives criticality for having a set-back (i.e. limits the wear of the insert to the region between the cutting edge and the set-back ('536, Col. 2, lines 6-25). Regarding Claim 17, Applicant's argument (page 11 of Remarks, lines 12-13) that Niebauer does not teach a spur is persuasive, however Vollmer et al. teaches a spur therefore Claim 17 would be rejected. Claim 8 has been amended and the language used changes the scope of the limitation such that it raises new issues that require further searching therefore Claim 8 has not been entered (note: dependent claims 9 and 10 would be affected by this change). Claim 11 was rejected under U.S.C. 112, second paragraph in the Office Action mailed 9/9/05. The amendment of claim 11, only changes the reference number referred to in figure 5 and does not further clarify the claimed subject matter. Therefore claim 11 and dependent claims claims 12-14 stand rejected. Additionally the S-shaped profile claimed in Claim 12 is not shown in the drawings provided on 12/1/03. .

Continuation of 13. Other: It should be noted that if the amendment would have been entered, the rejection of Claims 4 and 16 , under U.S.C. 112, 2nd paragraph were overcome. .